

THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JUDITH ZIMMERLY; ZP#5 LLC, a  
Washington limited liability company; JERRY  
NUTTER; and NUTTER CORPORATION, a  
Washington corporation,

Plaintiffs,

v.

COLUMBIA RIVER GORGE COMMISSION;  
ROBERT LIBERTY, in official and individual  
capacities; BRIDGET BAILEY, in official  
capacity; BOWEN BLAIR, in official capacity;  
HON. DON BONKER, in official capacity;  
LYNN BURDITT, in official capacity;  
KEITH CHAMBERLAIN, in official capacity;  
SONDRA CLARK, in official capacity;  
LORRIE DEKAY, in official capacity;  
DAN ERICKSEN, in official capacity;  
ROBIN GRIMWADE, in official capacity;  
JERRY MENINICK, in official capacity;  
CARINA MILLER, in official capacity;  
ANTONE MINTHORN, in official capacity;  
RODGER NICHOLS, in official capacity;  
DAMON WEBSTER, in official capacity; and  
JANET WAINWRIGHT, in official capacity,

Defendants.

Case No. 3:22-CV-5209-BHS

FED. R. CIV. P. 26(F) AND LCR 16  
JOINT STATUS REPORT AND  
DISCOVERY PLAN

**JOINT STATUS REPORT AND DISCOVERY PLAN**

In accordance with the Court's October 14, 2022 Order to Show Cause, Dkt. No. 64,  
Plaintiffs Judith Zimmerly, ZP#5 LLC, Jerry Nutter and Nutter Corporation ("Plaintiffs") and

FED. R. CIV. P. 26(F) AND LCR 16 JOINT STATUS  
REPORT AND DISCOVERY PLAN:  
CASE NO. 3:22-CV-5209 - 1

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1 Defendants Columbia River Gorge Commission, Commissioners Robert Liberty, Bridget  
2 Bailey, Bowen Blair, Honorable Don Bonker, Keith Chamberlain, Sondra Clark, Lorrie  
3 Dekay, Dan Ericksen, Robin Grimwade, Jerry Meninick, Carina Miller, Anotone Minthorn,  
4 Rodger Nichols, Damon Webster, and Jane Wainwright (“Defendants”), (collectively, the  
5 “Parties”), by and through their counsel submit this Joint Status Report<sup>1</sup>.

6 The Parties met and conferred by Zoom conference on November 18, 2022 and have  
7 cooperated in the preparation of this Report.

8 Defendant Lynn Burditt filed an unopposed motion to be dismissed from this case so,  
9 with consent of all Parties’ counsel, Defendant Burditt’s counsel did not participate in the Rule  
10 26(f) conference or the preparation of this Report.

11 Rule 26(f)(2): The Parties briefly discussed the nature and bases for their claims and  
12 defenses, the possibilities for settling or resolving the case outside of court, and whether a  
13 discovery plan can be developed.

14 The Parties agreed that until the Court rules on the pending motions to intervene and  
15 motions to dismiss (the “Motions”), they cannot effectively develop a discovery plan; consider  
16 settlement; accurately estimate the number of days needed for trial; or otherwise plan for the  
17 dates upon which they will be ready for trial. The Parties recommend they reconvene within  
18 ten (10) days after the Court’s ruling on the pending Motions to conduct another Rule 26(f)  
19 conference if the Court does not dismiss Plaintiffs’ complaint in its entirety. At such  
20 conference, the Parties would develop a discovery plan; determine whether any discovery  
21 limitations should be imposed; determine whether any Rule 26(c) or Rule 16(b) and (c) orders  
22 may be desirable; discuss whether to stay all or part of the case to allow the related proceedings  
23  
24  
25

26 <sup>1</sup> The Commission and Washington Commissioners assert that the named Commissioners who are no longer on the Commission should be substituted by their successors under Rule 25(d).

1 currently pending in the Washington State Court of Appeals Division II to finalize; and then  
2 submit another joint status report to the Court (the "Second Report").

3 The Parties exchanged initial disclosures as required by FRCP 26(a)(1), on or before  
4 December 2, 2022, as required by Court's order at Docket 66.

5 The Parties agreed to preserve discoverable information and do not currently anticipate  
6 any problems doing so.

7 The Parties plan to sign and file an electronically stored information (ESI) agreement  
8 that is essentially in the form of the Court's Model ESI Agreement, together with the Second  
9 Report, proposed above.

10 The Parties anticipate there may be issues in this case regarding attorney-client  
11 privilege or work product protections related to the joint defense agreement that is implicated  
12 by this litigation. The Parties propose to address those concerns in the Second Report, once  
13 the Court rules on the Motions.


14 Dated this 9th day of December, 2022.

15  
16 /s/ Katy Dixon, auth'd by email 12/6/2022

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